

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE PAINT POT, S.A., ALSO KNOWN
AS COMPANIA PINTURAS EL POTE, S.A.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2751

Decision No. CU - 525

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$85,000.00, was presented by Frank R. Esposito, for and on behalf of THE PAINT POT, S.A., and is based upon the asserted loss of the "net worth of an Auto Paint and Body Shop Supplies warehouse and manufacturers of Plastic Fillers, Putties, Lacquer Thinners and Reducers, etc."

Under Title V of the International Claims Settlement Act of 1949 [78 Stat.1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

This claim, filed by Frank R. Esposito for and on behalf of THE PAINT POT, S.A., has been asserted for the loss of an auto body and paint shop, with other business endeavor, as outlined above. Mr. Esposito stated that he personally owned in excess of 50% of the stock of the corporation but submitted no data to establish such ownership or evidence with respect to his United States nationality. In support of the claim, Mr. Esposito submitted a "Business Constitution", compiled in Havana, Cuba, in January 1955, indicating the formation of a Havana business enterprise between himself and others, but pages 3-9, inclusive, of this document were not included. Further, Mr. Esposito submitted photocopies of stock certificates, numbered 1 and 4, each for 28 shares, in his favor, issued by THE PAINT POT, S.A., in Havana, in April 1955.

By Commission letter of June 13, 1967, claimant was advised, through Mr. Esposito, as to the type of evidence proper for submission to establish this claim under the Act, including information on the nationality of Mr. Esposito, the ownership, loss and value of the claimant corporation, as well as the percentage of stock of claimant corporation which was owned by

nationals of the United States. Thereafter, on July 19, 1967, claimant was invited, through Mr. Esposito, to submit any evidence available to it within 45 days from that date, and it was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The claimant herein, THE PAINT POT, S.A., filed this claim with the Commission on May 1, 1967, indicating in the aforesaid business constitution and claim that their principal place of business was Havana, Cuba. No evidence has been submitted to establish that the claimant qualifies as a "national of the United States" within the meaning of the Act.

Thus, no evidence has been submitted to establish that the property upon which this claim is based was owned by a corporation which qualifies as a national of the United States in that 50% per centum or more of its outstanding capital stock was owned directly or indirectly by natural persons who are citizens of the United States, as is required under the provisions of Section 502(1)(B) of Title V of the Act. The Commission finds that the claimant has failed to establish that this is a claim of a national of the United States, as defined in Section 502(1)(B) of the Act. (See the Claim of F. L. Smidth and Company, FCSC Claim No. CU-0104).

Moreover, other than photocopies of purported stock certificates, dated 1955, Mr. Esposito has submitted no documentary evidence to establish his ownership of interests in the claimant corporation, the value of his interest on the date of loss, or of Mr. Esposito's nationality. By Commission letter of June 13, 1967, the Commission suggested that Mr. Esposito submit evidence of his nationality, together with information and evidence to show his ownership interest and the value of claimant corporation on the date of loss. No evidence has since been presented.

Information available to the Commission indicates that THE PAINT POT, S.A., may have been intervened by the Government of Cuba in 1961; however, Mr. Esposito has not submitted additional evidence upon which the Commission could base a favorable determination.

The claimant has therefore not met the burden of proof, either for or on behalf of claimant in its corporate capacity, or for Mr. Esposito, in his capacity as a stockholder in claimant corporation.

Accordingly, and for the reasons set forth, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 25 1967

Edward D. Re

Edward D. Re, Chairman

~~Commissioner~~

I do hereby certify that this is a true and correct copy of the decision of the Commission as entered as the final decision on 4-DEC-1967

Theodore Jaffe

Theodore Jaffe, Commissioner

Lavern R. Dilweg

~~Member of the Commission~~
Lavern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)